



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

AND

Respondent

MISS A PEIMONTE

P AND T ENIN

Heard at: London Central

On: 19 September 2018

Before: Employment Judge Oliver Segal QC

Representations

For the Claimant: In person

For the Respondent: Did not attend

REASONS

1. The Claimant brings a claim under the National Minimum Wage Regulations 2015 ("the Regulations") for underpayment of wages whilst working as a domestic worker by the Respondents between 8 July 2017 and 29 December 2017; together with small claims in relation to holiday pay and notice pay.
2. The Respondents did not enter a Response to the claim, which was listed for hearing today.
3. The Claimant sought a default judgment in the total sum of £10,310.52.
4. Notwithstanding the absence of the Respondents and of a Response, I decided that I needed to hear sworn evidence from the Claimant, which she provided.
5. I accepted the following as being the material facts proved by the Claimant in her written and oral evidence in response to my questions:-

- 5.1. The Claimant was employed by the Respondents between the dates above (a period of just under 25 weeks) as an au pair/domestic worker, based at the Respondents' residence at 14 Stadium Street, London. (She had originally been employed by them when they were living in Ireland.)
- 5.2. The Claimant was entitled to be paid at an annual rate of £7,200, or £600 a month.
- 5.3. The Respondents paid the Claimant £600 per month, sometimes in cash, sometimes by bank transfer. The Claimant provided copies of some bank statements showing instances of the latter.
- 5.4. The Respondents controlled fairly strictly what the Claimant did and was able to do, including requiring her to return home by 10:30 if she went out to socialise.
- 5.5. The Claimant typically worked about 7am to 8pm 6 days per week. She was supposed to get a two hour break but generally did not. She sometimes worked till beyond 8pm. Her working week averaged 78 hours.
- 5.6. The Claimant did baby-sitting work and inter alia would do almost all the cleaning tasks (save that an external cleaner was engaged to attend about once a month).
- 5.7. The Claimant was not in general treated as a member of the Respondents' family, and in particular did not eat with the Respondents but ate in her own room.
- 5.8. The Claimant bought her own soap, shampoo, etc.
- 5.9. The Claimant was not charged for and suffered no deductions in respect of living accommodation.
- 5.10. The Claimant did not take annual leave during her employment in London, other than as set out below.

5.11. The Claimant took a week of annual leave by agreement with the Respondents to visit her family 22-29 December 2017. The Claimant was not paid holiday pay for that week.

5.12. On 28 December the Claimant phoned the Respondents and was dismissed by them during that call.

6. I had regard to Regs. 16, 21, 22(3), 24-29, 57 of the Regulations

7. I reached the following conclusions:-

7.1. The exception in Reg. 57 did not apply. The requirement of 57(3)(b) did not apply. Nor, probably, did that in 57(3)(d).

7.2. The Claimant performed salaried hours work for 24 weeks, with pay reference periods of one month. During the material pay reference periods the Claimant was paid £600 per month for performing 78 hours work a week.

7.3. The Claimant therefore should have been paid $24 \times 78 \times £7.50 = £14,040$, subject to applicable deductions.

7.4. From that sum must be deducted $24 \times 7 \times £6.40$ pursuant to reg 16 = £1,075.20.

7.5. Thus, in total she should have been paid £12,964.80

7.6. She was in fact paid £3,600.

7.7. Thus, she was underpaid by **£9,364.80**.

7.8. I also award one week's pay at £150 for unpaid holiday pay; and 1 week's pay at £150 for unpaid notice pay.

8. Thus, the Claimants claims succeed in the total sum of **£9,664.80**.

